

Module I

Course: USDA Civil Rights Overview
Module I: Equal Employment Opportunity

Lesson B

Prohibited Discrimination in Employment

Description: In this lesson, you will examine what are the prohibited forms of discrimination and how they can be identified and eliminated.

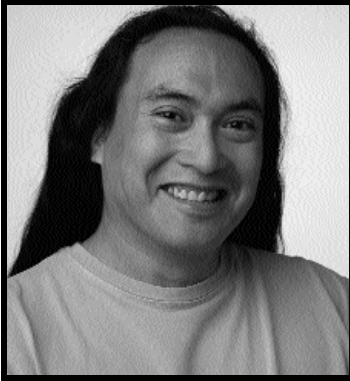
Objectives: Upon completion of this lesson, you will be able to:

- Identify the five key components of discrimination.
- Identify five ways discrimination can occur.
- Identify the eight bases for unlawful discrimination.

Listed below are the **topics** associated with this lesson.

- Topic 1 Five Key Components of Discrimination
- Topic 2 Five Ways Discrimination Can Occur
- Topic 3 Race, Color and National Origin
- Topic 4 Sex, Sexual Orientation, Sexual Harassment and Pregnancy
- Topic 5 Religion, Age, Disability and Equal Pay





Lesson B

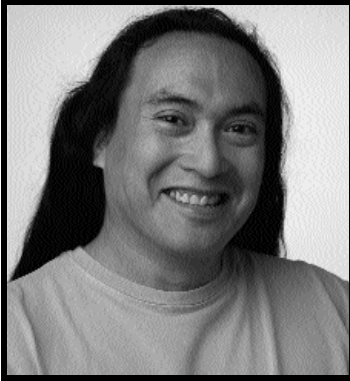
Prohibited Discrimination in Employment

Topic 1: Five Key Components of Discrimination

There are five key components of discrimination:

Cause	The cause of discrimination is any act, failure to act, policy, practice or procedure.
Result	The result of discrimination is an adverse effect on employment opportunities, privileges, benefits or working conditions.
Basis	The basis of discrimination is the reason someone believes he or she has been discriminated against: race, color, national origin, religion, sex, age, sexual orientation, disability or opposition to discrimination (retaliation).
Motive	Discrimination may be intentional or unintentional.
Affected Persons	Affected persons include federal employees, applicants for federal employment or former federal employees (referrals/post-employment benefits).





Lesson B

Prohibited Discrimination in Employment
Topic 1: Five Key Components of Discrimination

Example

Age/Race Discrimination

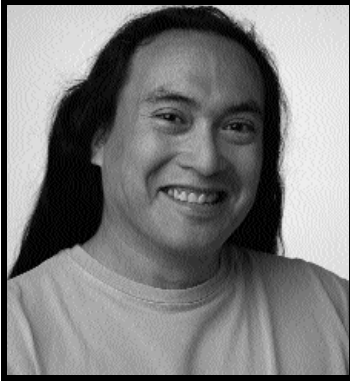
John, a 55-year-old African American male, has worked for USDA for 30 years. He began his career while still in college. John has recently felt that his career has become stagnant. He has not received training or a promotion in 10 years. He decides to apply for a new job that would result in a promotion. John is not selected.

John requests a meeting with the selecting official, a former coworker, and asks for feedback as to why he was not selected. John is gently told that he has not kept up with the technological revolution but that the person who was selected has.

John thinks about this honest feedback and then decides to file a civil rights complaint alleging discrimination on the basis of race (Black) and age (55). He has asked for computer training each year, but younger employees were chosen instead of him. The last three hires, furthermore, were of different races than his. Was John discriminated against (based only on the information given)?

CONCLUSION: Based on the information given, John was probably discriminated against. However, more information needs to be provided, such as why he was denied training, and why the new hires were given training.





Lesson B

Prohibited Discrimination in Employment
Topic 1: Five Key Components of Discrimination

Exercise

Unintentional Discrimination

A mortgage lending company is trying to reach out to Asian-Americans in a rural community. They open a branch office in the community where 60 percent of the population is Asian-American. As the mortgage lending company interviews applicants for this new office, they only recruit Asian-Americans, who the company feels will relate better to their customers.

Components of Discrimination: Motive

Discrimination can occur intentionally, but many times it is unintentional.

1. Is this an example of discrimination, even if it was not intentional?
(Circle one)

YES

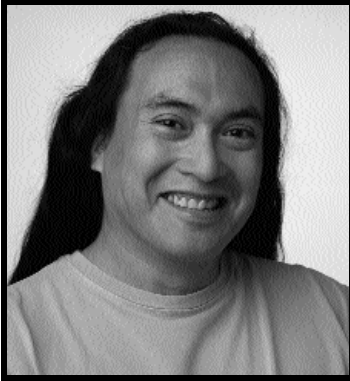
NO

2. Is unintentional discrimination illegal? (Circle one)

YES

NO





Lesson B

Prohibited Discrimination in Employment

Topic: 1 Five Key Components of Discrimination

Exercise Answers

1. Is this an example of discrimination, even if it was not intentional?

YES is the correct answer.

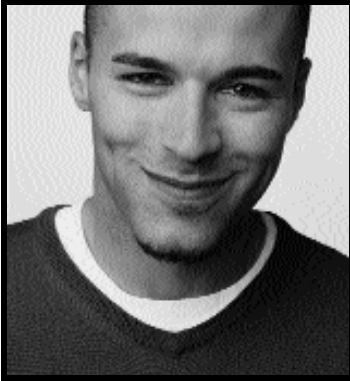
Even though it may be unintentional, it is still discrimination. The mortgage lending company should make employment opportunities available to all qualified applicants. It can hire a significant amount of Asian-Americans to service the community, but cannot hire ONLY Asian-Americans.

2. Is unintentional discrimination illegal?

YES is the correct answer.

Actions or decisions that have the unintentional effect of discrimination are also illegal.





Lesson B

Prohibited Discrimination in Employment

Topic 2: Five Ways Discrimination Can Occur

Disparate Treatment - Treatment that excludes individuals from employment opportunities or treats individuals unfairly on the basis of their race, color, national origin, sex, age, sexual orientation or disability.

Disparate Impact - An employment policy or practice that appears to be neutral and is applied equally to all employees. However, this policy or practice has the effect of unfairly excluding groups of people on the basis of their race, color, national origin, religion, sex, age, sexual orientation or disability.

Accommodation of Religion - Federal agencies are required to accommodate the religious beliefs or practices of an individual. Exceptions to this rule include the accommodation being unreasonable, creating an undue hardship on the agency, or if the employee or candidate was not otherwise qualified for the employment opportunity.

Accommodation of Disability - Federal agencies are required to make reasonable accommodation in the application process or essential job functions for any "qualified" individual applying for employment or employed by the agency.

Retaliation (also known as reprisal) - Retaliation is any act of discrimination, restraint, interference or pressure against an individual because he or she has:

- Filed or stated an intention to file an EEO complaint or lawsuit.
- Participated or stated an intention to participate in any stage of an EEO complaint or lawsuit as a representative, witness, counselor or other capacity.
- Opposed discrimination.





Lesson B

Prohibited Discrimination in Employment

Topic 2: Five Ways Discrimination Can Occur

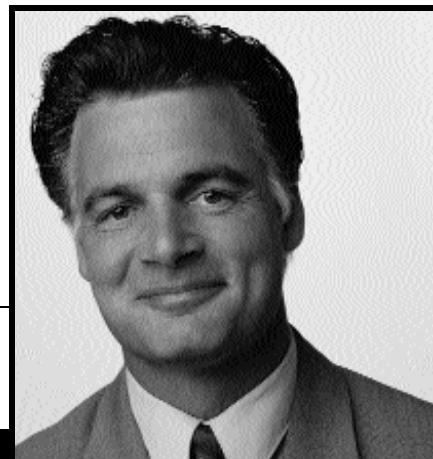
Example

Religious Accommodation

Daniel, a 34-year-old Jewish male who wears a yarmulke, walks up to his supervisor, Pete, a 53-year-old White male. Daniel asks him whether he can take a week of annual leave the following month so he can be with his parents during the High Holy Days.

"Get out of here," Pete shouts.

Daniel hangs his head and starts to walk away. Pete calls after him. "You know that's our busiest time. They're going to be breathing down our necks to get the financial reports done. Forget it! Maybe I'll let you have off that other holiday that all you people have. What's it called? Hanukkah?"





Lesson B

Prohibited Discrimination in Employment
Topic 2: Five Ways Discrimination Can Occur

Exercise

Disparate Treatment Discrimination

Disparate Treatment, Disparate Impact.

Test your understanding of what makes a situation discriminatory.

Cindy, a White female, is not selected for a customer service representative position in one of the agency's field offices. Instead, a Black female is selected. The reason for Cindy's nonselection is that the selecting official felt Cindy would not be able to establish rapport with the field office's customers, most of whom are Black.

Why is this situation discriminatory? (Circle the correct answer.)

- A. Cindy's nonselection is an example of reprisal.
- B. Cindy's nonselection is an example of disparate treatment.
- C. Cindy's nonselection is an example of disparate impact.





Lesson B

Prohibited Discrimination in Employment

Topic 2: Five Ways Discrimination Can Occur

Exercise Answers

- a. Incorrect Cindy's nonselection is not an example of reprisal.
- b. Correct Cindy's nonselection is an example of a candidate being treated differently because of his or her race - a form of disparate treatment.
- c. Incorrect Cindy's nonselection is not an example of disparate impact.





Lesson B

Prohibited Discrimination in Employment

Topic 3: Race, Color and National Origin

Discrimination Based on Race (Title VII, Civil Rights Act of 1964): The denial of any employment opportunity on the basis of an individual's race.

Discrimination Based on Color (Title VII, Civil Rights Act of 1964): The denial of any employment opportunity on the basis of an individual's skin color, shade, tone or complexion.

Discrimination Based on National Origin (Title VII, Civil Rights Act of 1964): The denial of any employment opportunity on the basis of an individual's national origin. National origin refers to an individual's country of origin, birthplace or cultural identity.

Exceptions:

A rule requiring employees to speak only English at all times on the job may be a form of illegal discrimination. The exception would be if the employer can show that English is necessary for conducting business. If an employer believes that the English-only rule is critical for business purposes, employees have to be told when they must speak English and the penalty for violating the rule.





Lesson B

Prohibited Discrimination in Employment

Topic 3: Race, Color and National Origin

Example

Subtle Discrimination

Anytime an employer allows a person's hereditary characteristics or racial identity to influence an employment decision or workplace condition to that person's disadvantage, the employer is guilty of race discrimination.

The bias that influences racially discriminatory actions can be subtle, such as a subconscious need to preserve a personal comfort level by surrounding oneself with people with similar genetic characteristics. Once such a pattern is established, the racial discrimination is often perpetuated in subsequent decisions for years to come.





Lesson B

Prohibited Discrimination in Employment

Topic 3: Race, Color and National Origin

Exercise

Robert's Story

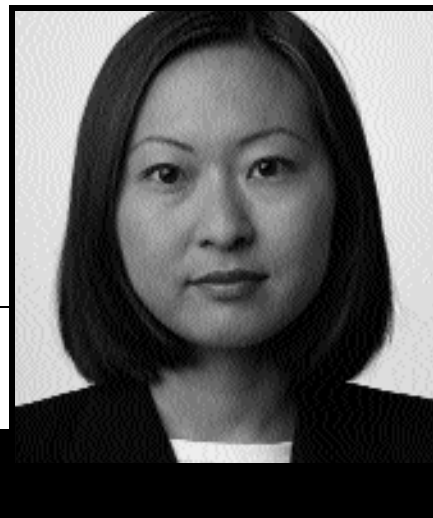
Robert, a Black male in his mid-twenties

"A month ago, I applied for a GS-13 Section Chief vacancy in one of the other sections in the division. I just found out before coming to this class that a White co-worker, Bill, was selected. Bill and I both came into the section at about the same time, held identical positions and had the same amount of education. When I asked Hector, our Division Chief, why I didn't get the job, he told me it was because I didn't have prior supervisory experience. Bill had the edge over me because he had served as Acting Section Chief on a number of occasions."

"I was pretty upset and I told Hector that the reason I didn't have any 'acting supervisory' experience like Bill was because I had never been asked to take on that role. Looking back, I realize that every time Karen, our Section Chief, went on leave, she always asked Bill to step in for her. Sure, it used to annoy me because Karen always seemed more comfortable around Bill. I think they went to the same high school together and belong to the same church. I should've complained when it first started, but how did I know that Bill's acting assignments were going to give him an advantage over me come promotion time? As soon as I get back, I intend to talk to an EEO counselor about this."

What should Hector or Karen have done differently to avoid the potential for a discrimination complaint? (Circle the correct answers.)

- A.** Hector should have simply told Robert that he did not meet the requirements for the job and nothing more.
- B.** The agency should have noncompetitively promoted Bill into the job instead of advertising it.
- C.** Karen should have rotated the opportunity to be her acting replacement equally among all her subordinate GS-12s including Bill and Robert.
- D.** Hector should have automatically selected Robert to avoid potential for a race complaint.





Lesson B

Prohibited Discrimination in Employment

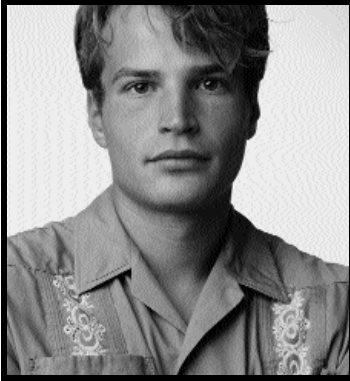
Topic 3: Race, Color and National Origin

Exercise Answers

What should Hector or Karen have done differently to avoid the potential for a discrimination complaint? (Circle the correct answers.)

- A Incorrect** Although Hector did not owe Robert any information about the qualification of the person selected, Robert was entitled to know how his own qualifications failed to meet the requirements for the job.
- B Incorrect** Robert would still have had a basis for a discrimination complaint.
- C Correct** This would have eliminated the potential for a very common basis for discrimination complaints--inequitable distribution of developmental assignments among subordinates. Managers and supervisors should be aware that by not giving all subordinates an equal opportunity for special assignments and developmental experiences, they are engaging in discriminatory practices.
- D Incorrect** Unless Hector is able to define his selection based on Robert's job-related qualifications, Bill could have the basis for a race-discrimination complaint.





Lesson B

Prohibited Discrimination in Employment

Topic 4: Sex, Sexual Orientation, Sexual Harassment and Pregnancy

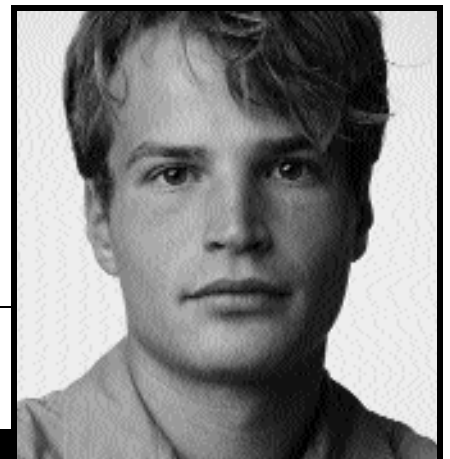
Discrimination Based on Sex (Title VII, Civil Rights Act of 1964): The denial of employment opportunity based on an individual's sex. Both male and female federal employees and applicants are equally protected from discriminatory actions and harassment based on gender.

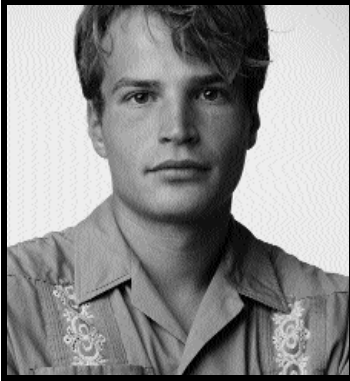
Discrimination Based on Sexual Orientation (Executive Order 13087): This Executive Order prohibits discrimination on the basis of sexual orientation in the federal civilian work force. This Executive Order did not establish appeal rights to the Equal Employment Opportunity Commission (EEOC) or federal district courts.

Sexual Harassment (Title VII, Civil Rights Act of 1964): The EEOC defines sexual harassment as unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:

- Submission to sexual conduct is made either directly or indirectly as a term or condition of employment.
- Submission to, or rejection of, sexual conduct by an individual is used as the basis for employment decisions affecting the individual.
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile or offensive working environment.

Pregnancy Discrimination (Pregnancy Discrimination Act of 1978 and Title VII, Civil Rights Act of 1964): The denial of employment opportunity and benefits on the basis of pregnancy, childbirth or any other related medical condition.





Lesson B

Prohibited Discrimination in Employment

Topic 4: Sex, Sexual Orientation, Sexual Harassment and Pregnancy

Example #1

Sex Discrimination

Examples of Sex Discrimination:

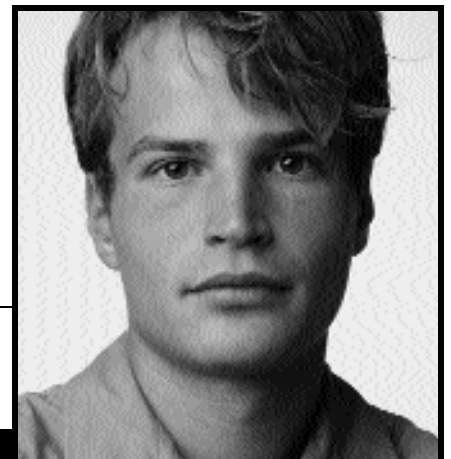
Giving more supervisory coaching and mentoring to members of one gender than to members of the other.

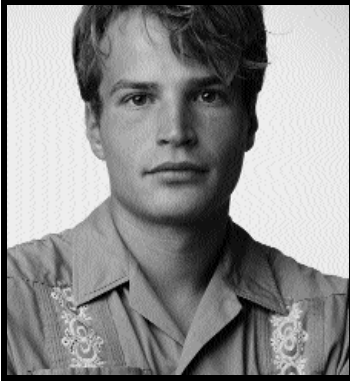
Assigning high-visibility, high-prestige tasks predominately to members of one gender.

Using inappropriate terms of endearment to members of a particular gender.

Excluding members of a particular gender from "nontraditional" developmental assignments, for example, information systems, nursing, mechanics, human resources or law enforcement.

Arbitrarily disqualifying female applicants who are pregnant or of child-bearing age from certain positions or assignments because of employer-perceived risk.





Lesson B

Prohibited Discrimination in Employment

Topic 4: Sex, Sexual Orientation, Sexual Harassment and Pregnancy

Example #2

Examples of Sexual Harassment

Quid Pro Quo: Jane was fired for calling in sick. Male employees who called in sick were not fired. She believes that she was fired because she refused to submit to the sexual demands of a supervisor.

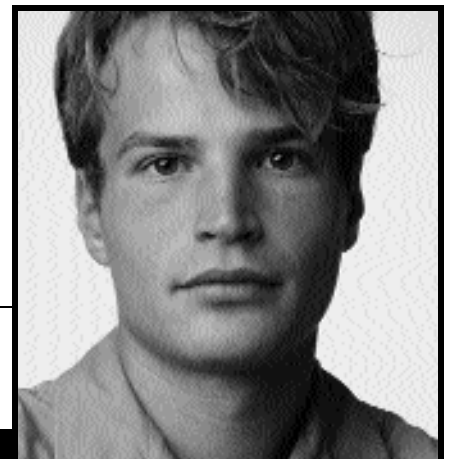
Physical Contact: A woman is sitting at her desk, and a man comes up behind her and massages her shoulders.

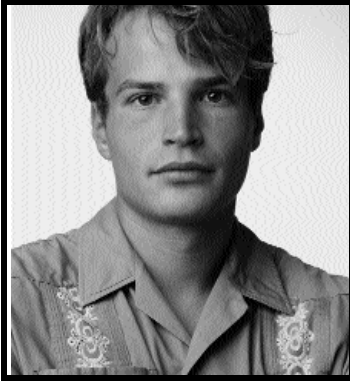
Pin-Ups/Posters: A woman is sitting at her desk. She has several pin-up posters on her wall.

Dirty Jokes: Every time the photocopy repair technician shows up to fix the machine, he tells dirty jokes.

Ogling or Staring: A man is looking at a woman walking toward him. He is obviously staring at her.

Personal Space: A woman is helping a man with some work on his desk. She is sitting uncomfortably close to him.





Lesson B

Prohibited Discrimination in Employment

Topic 4: Sex, Sexual Orientation, Sexual Harassment and Pregnancy

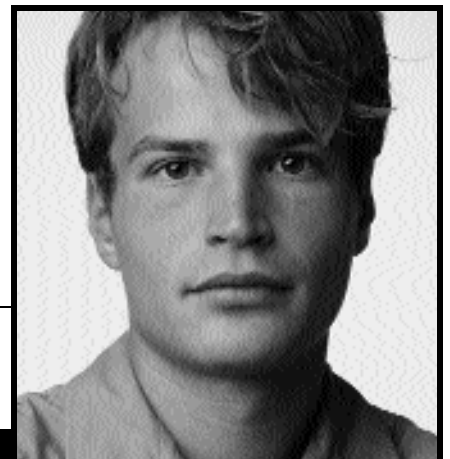
Example #3

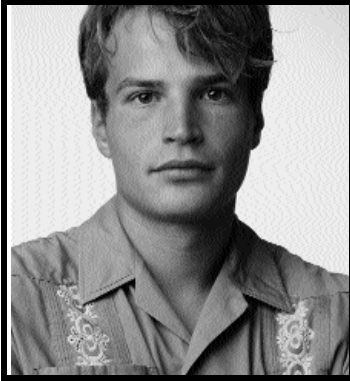
Sexual Orientation

Steve started working in a temporary position as a data entry clerk for a government accounting office. Steve so impressed management that soon after he started, he was promoted to a permanent position, with a large increase in pay. While working in the accounting office, Steve received several letters of commendation for his outstanding service.

A year later Steve brought his significant other, John, to a holiday party. The following week, the Section Chief called Steve into his office. "People find your personal preference offensive," he told Steve. When Steve asked whether he was referring to his being gay, the Section Chief responded, "It just makes people feel too uncomfortable!"

Several weeks later, the Section Chief demoted Steve back to data entry clerk, with a significant decrease in pay. Two months later, Steve was told that he had to be laid off due to a reduction in force.





Lesson B

Prohibited Discrimination in Employment

Topic 4: Sex, Sexual Orientation, Sexual Harassment and Pregnancy

Exercise

Types of Sexual Discrimination

Select a discrimination type from below and enter it next to the appropriate story.

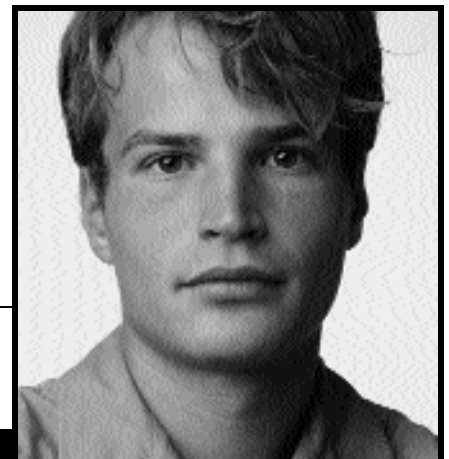
_____ **Stacy's Story:** When a field inspector job opened up, Stacy applied and made the best-qualified list. She was really disappointed when one of the men on the crew was selected. Stacy expected Al, her supervisor, to tell her it was because most of her experience was in research. Stacy couldn't believe it when he told her that it was because she was pregnant. He didn't think that Stacy should apply for such a strenuous job, even though her doctor had given her a green light to perform field inspector work.

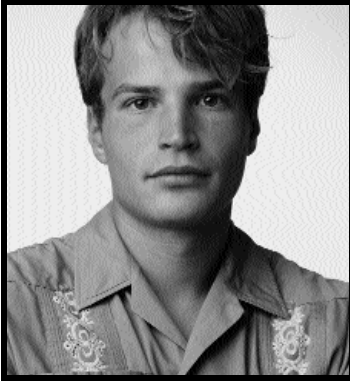
_____ **Overnight Business Trip:** Whenever female candidates are considered for out-of-town business trips, their supervisor always asks them if they have their husband's permission to make overnight trips. Of course, the male candidates are never asked if they have their wives' permission.

_____ **Honesty Not the Best Policy:** Ellen, who works as a receptionist at a government agency, is open and honest about the fact that she is lesbian. She has received outstanding ratings by her supervisor in her performance reviews. The office manager, however, feels that Ellen has been giving the office a "bad name" because of her sexual orientation. The office manager met with Ellen several times and warned her to keep her sexual orientation under cover. After several warnings, Ellen was let go due to "continued insubordination."

_____ **Renee's Predicament:** Martha's conduct toward Renee, a coworker, has sexual overtones. Renee is uncomfortable with Martha's conduct but does not report her discomfort to management. Renee thinks that since she and Martha are both female, she does not have grounds to file a complaint.

- A. Discrimination based on sex
- B. Discrimination based on sexual orientation
- C. Sexual harassment discrimination
- D. Pregnancy





Lesson B

Prohibited Discrimination in Employment

Topic 4: Sex, Sexual Orientation, Sexual Harassment and Pregnancy

Exercise Answers

D

Stacy's Story: When a field inspector job opened up, Stacy applied and made the best-qualified list. She was really disappointed when one of the men on the crew was selected. Stacy expected Al, her supervisor, to tell her it was because most of her experience was in research. Stacy couldn't believe it when he told her that it was because she was pregnant. He didn't think that Stacy should apply for such a strenuous job, even though her doctor had given her a green light to perform field inspector work.

A

Overnight Business Trip: Whenever female candidates are considered for out-of-town business trips, their supervisor always asks them if they have their husband's permission to make overnight trips. Of course, the male candidates are never asked if they have their wives' permission.

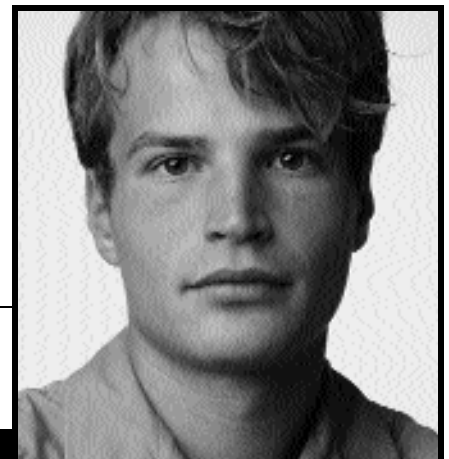
B

Honesty Not the Best Policy: Ellen, who works as a receptionist at a government agency, is open and honest about the fact that she is lesbian. She has received outstanding ratings by her supervisor in her performance reviews. The office manager, however, feels that Ellen has been giving the office a "bad name" because of her sexual orientation. The office manager met with Ellen several times and warned her to keep her sexual orientation under cover. After several warnings, Ellen was let go due to "continued insubordination."

C

Renee's Predicament: Martha's conduct toward Renee, a co-worker, has sexual overtones. Renee is uncomfortable with Martha's conduct but does not report her discomfort to management. Renee thinks that since she and Martha are both female, she does not have grounds to file a complaint.

- A. Discrimination based on sex
- B. Discrimination based on sexual orientation
- C. Sexual harassment discrimination
- D. Pregnancy





Lesson B

Prohibited Discrimination in Employment

Topic 5: Religion, Age, Disability and Equal Pay

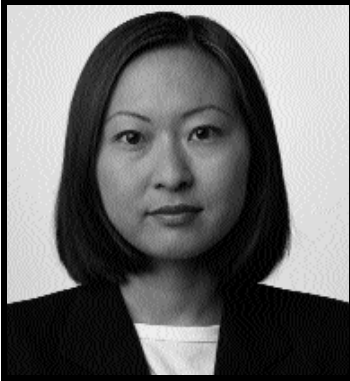
Discrimination Based on Religion (Title VII, Civil Rights Act of 1964): The denial of employment opportunity on the basis of an individual's religious belief is prohibited. The Equal Employment Opportunity Commission (EEOC) considers religion to include any sincere ethical or moral beliefs about what is right or wrong and which are sincerely held; it gives these beliefs the same recognition as traditional religious views, observances or practices.

Age Discrimination (Age Discrimination Employment Act of 1967): The denial of employment opportunity on the basis of an individual's age (40 and older) is prohibited.

Disability Discrimination (Section 501 of the Rehabilitation Act of 1973): The denial of employment opportunity to any "qualified" individual who has a physical or mental disability, a history of disability or is regarded as being disabled is prohibited. To be protected under law, the individual must have a disability, as defined by the EEOC, and be qualified at his or her job.

Sex Discrimination - Unequal Pay (Equal Pay Act of 1963): The denial of equal pay on the basis of sex is prohibited. Men and women must receive equal pay for equal work.





Lesson B

Prohibited Discrimination in Employment
Topic 5: Religion, Age, Disability and Equal Pay

Example

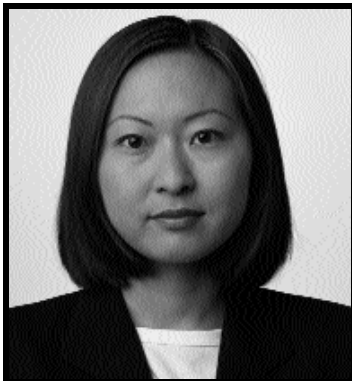
Disability Discrimination #2

Marcia is a 33-year-old female who is blind. She thought she did well at her first round interview for a middle management opportunity in a customer service department.

John, Marcia's interviewer, felt that even though Marcia was qualified, she might be considered high maintenance (someone who would always need extra help) by **Cynthia**, the Customer Service department head.

John mentioned this to Cynthia in passing and added, "There is another person a little better suited for the job who I am bringing in for the second round before we even need to consider Marcia..."





Lesson B

Prohibited Discrimination in Employment

Topic 5: Religion, Age, Disability and Equal Pay

Exercise

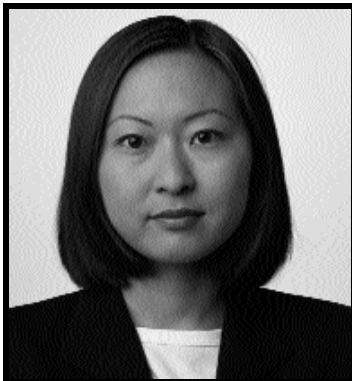
Employment Discrimination

Complete the following exercise on employment discrimination. Match the scenario with the type of discrimination.

- _____ Sam was passed over out of fear that he might be a "religious fanatic" because he wore a religious necklace outside of his collar at both his first- and second-round interviews.
- _____ Joe was not offered a position or a promotion as a creative director even though he was best qualified for the position. The fear was that he might no longer be able to "keep up with cutting-edge technology" because of his age.
- _____ Marcia was denied a second round interview for a customer service position because there was fear of how "high maintenance" she might be because of her blindness. Marcia has successfully held two previous similar positions with no problems or complaints.
- _____ Mary was chosen over Tom for a management position because upper management assumed that Mary would settle for a lesser salary than Tom. Both individuals are about the same age with very similar experience and qualifications.

- A.** Disability discrimination
- B.** Discrimination based on religion
- C.** Sex discrimination
- D.** Age discrimination





Lesson B

Prohibited Discrimination in Employment

Topic 5: Religion, Age, Disability and Equal Pay

Exercise Answers

Complete the following exercise on discrimination of employment. Match the scenario with the type of discrimination.

B Sam was passed over out of the fear that he might be a "religious fanatic" because he wore a religious necklace outside of his collar at both his first- and second-round interviews.

D Joe was not offered a position or a promotion as a creative director even though he was best qualified for the position. The fear was that he might no longer be able to "keep up with cutting-edge technology" because of his age.

A Marcia was denied a second round interview for a customer service position because there was fear of how "high maintenance" she might be because of her blindness. Marcia has successfully held two previous positions similar to this with no problems or complaints.

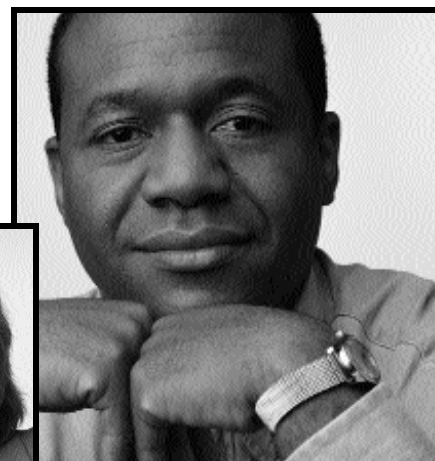
C Mary was chosen over Tom for a management position because upper management assumed that Mary would settle for a lesser salary than Tom. Both individuals are about the same age with very similar experience and qualifications.

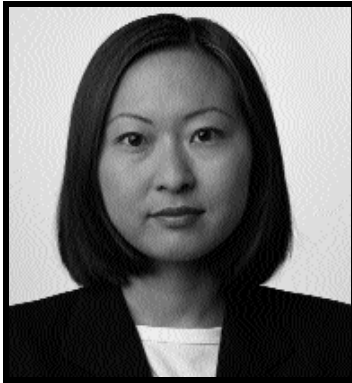
A. Disability discrimination

B. Discrimination based on religion

C. Sex discrimination

D. Age discrimination





Lesson B

Prohibited Discrimination in Employment

Lesson Summary

1. The key components of discrimination are:

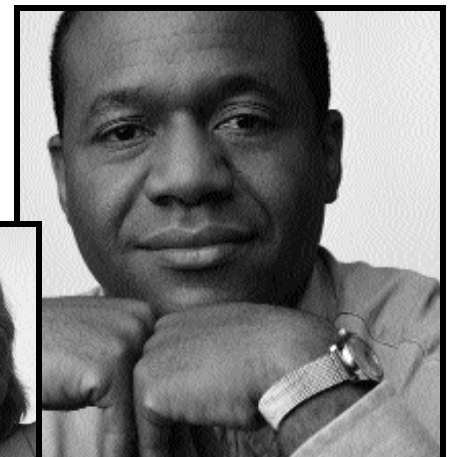
- A. Cause, effect, motive and affected person
- B. Cause, result, basis, motive and affected person
- C. Motive, result, effect and affected person
- D. Basis, motive, cause and result

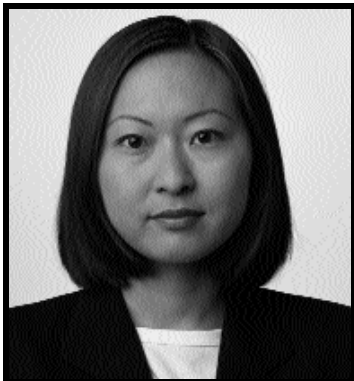
2. An applicant for employment and an employee can request an accommodation on the basis of: (Select all that apply.)

- A. Religion
- B. Race
- C. Sex
- D. Disability

3. Discrimination based on color refers to the individual's: (Select all that apply.)

- A. Complexion
- B. Shade
- C. Skin color
- D. Tone





Lesson B

Prohibited Discrimination in Employment

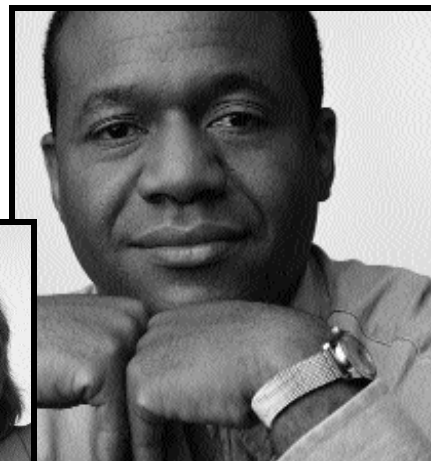
Lesson Summary (continued)

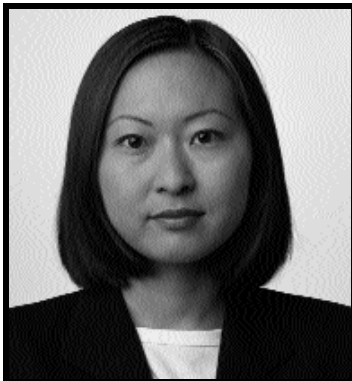
4. True or False? USDA employees or applicants for employment cannot be denied an employment opportunity on the basis of their gender or sexual orientation. The law and USDA nondiscrimination policies protect both males and females.

- A. True
- B. False

5. It is illegal to discriminate against an employee's ethical, moral or religious beliefs, which are:

- A. In line with traditional religion.
- B. Sincerely held with the strength of traditional religious views, observances or practices.
- C. Based on Christianity or Judaism.





Lesson B

Prohibited Discrimination in Employment

Lesson Summary Answers

1. The key components of discrimination are:

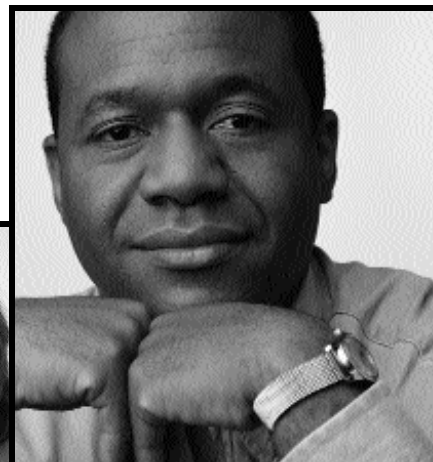
The correct answer is B. Cause, result, basis, motive and affected person are the five key components of discrimination.

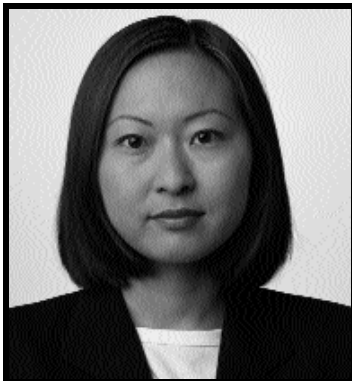
2. An applicant for employment and an employee can request an accommodation on the basis of: (Select all that apply.)

The correct answers are A and D. Federal agencies are required to make reasonable accommodations for a qualified individual with a disability and for the religious beliefs or practices of an individual.

3. Discrimination based on color refers to the individuals: (Select all that apply.)

The correct answers are A, B, C and D. Discrimination based on color refers to the individual's complexion, shade, skin color and tone.





Module I

Lesson B

Prohibited Discrimination in Employment

Lesson Summary Answers (continued)

4. True or False? USDA employees or applicants cannot be denied an employment opportunity on the basis of their gender or sexual orientation. The law and USDA nondiscrimination policies protect both males and females.

The answer is true. Title VII of the Civil Rights Act of 1964 protects individuals on the basis of sex, both men and women. Executive Order 13087 prohibits discrimination on the basis of sexual orientation.

5. It is illegal to discriminate against an employee's ethical, moral or religious beliefs, which are:

The correct answer is B. The Equal Employment Opportunity Commission considers religion as any sincere ethical or moral belief about what is right or wrong. In addition, the religion must be sincerely held with the strength of traditional religious views, observances or practices.

